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Issue Date: 10 November 2004

OALJ CASE NUMBER: 2005-TLC-00002

ETA CASE NUMBER: R6-04216-2415

In the Matter of :

BROKEN HOOF RANCH, INC.,
Employer.

ORDER

This case arises under the temporary agricultural labor or services provisions of the Immigration and Nationality Act, 8 U.S.C. §1101(a)(15)(H)(ii)(a), and implementing regulations set forth at 20 C.F.R. Part 655.

On July 14, 2004, Broken Hoof Ranch, Inc. (hereinafter "the Applicant") filed an application asking the Department of Labor's Employment and Training Administration ("ETA") to certify that there are not a sufficient number of workers in the United States who are able, willing and qualified to fill 10 job vacancies at the Broken Hoof Ranch. According to the application, the job vacancies are for workers who can perform various types of labor involved in growing and harvesting walnuts and peaches on a farm near Laton, California. In a letter dated September 29, 2004, an ETA certifying officer informed the Applicant that its application had been accepted for consideration and that the Applicant needed to provide certain information showing that it had attempted to recruit United States workers to fill the 10 job vacancies. On October 15, 2004, the Applicant's counsel reported to ETA that the Applicant had attempted to recruit United States workers through various means and had interviewed 15 applicants, but that none of the 15 applicants was deemed to be suitable for any of the available jobs. In particular, the counsel indicated that seven of the job applicants could speak only Spanish, that six didn't understand the "job duties," and that two of the applicants lived "very far" from the work site.

By letter dated October 22, 2004, the ETA informed the Applicant that its request for certification was being denied on the grounds that the initial application had failed to specify that the job applicants had to speak English and have experience as farm workers. As a result, on October 26, 2004 the Applicant requested expedited administrative review pursuant to the provisions of 20 C.F.R. §655.104(c).

Under the provisions of 20 C.F.R. §655.106(b), the ETA must count as an available United States worker any individual who has applied for a job described in a temporary labor

certification application, but was rejected by the employer for other than lawful, job-related reasons. This regulation also provides that a temporary labor certification shall not be granted if the ETA determines that recruitment efforts have identified enough able, willing and qualified United States workers to fill all of the employer's job opportunities. In this case, the ETA has concluded that the Applicant's request for a labor certification must be denied because the reasons given for rejecting the United States workers who applied for the jobs (inability to speak English and failure to understand the job duties) were not job-related. In explaining this conclusion, the ETA certifying officer pointed out that the Applicant's initial application failed to indicate that any of the jobs require the ability to speak English or experience as a farm worker. In its request for administrative review, the Applicant in effect contends that even though the ability to speak English is not listed as a job requirement in the initial application, it is nonetheless a lawful, job-related requirement. Likewise, the Applicant contends that its insistence that job applicants understand the job duties is a lawful, job-related requirement and not the same as requiring that job applicants have experience as farm workers.

After considering the Applicant's contentions, it has been concluded that the decision of the ETA to deny the labor certification application must be affirmed. In this regard, it is noted that the law's recruitment requirement would be severely undermined if applicants for labor certifications could reject United States job applicants for failing to meet requirements not set forth in the applications filed with the ETA. Indeed, any such practice could create situations in which United States workers would have to be more qualified for certain jobs than alternative foreign workers.

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Paul A. Mapes
Administrative Law Judge